

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4634 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA Sd/-

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
Nos. 1 to 5 No.

NASIRMIYA MOHMEDMIYA SHAIKH

Versus

STATE OF GUJARAT

Appearance:

MR MH BAREJIA for Petitioner

MR.NEEGAM SHUKILA, AGP for Respondents.

CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 06/11/96

ORAL JUDGEMENT

This Special Civil Application is directed against the order dated 29.5.1996 passed by the Police Commissioner, Ahmedabad City detaining the petitioner under the provisions of Gujarat Prevention of Antisocial Activities Act, 1985. The detention order was executed on 17.6.1996 and since then the petitioner is under detention lodged at Bhuj Special Jail, Bhuj.

This Special Civil Application was filed on 3.7.1996 and on 5.7.1996 Rule returnable on 26.8.1996 was issued but no reply or the affidavit of the Detaining Authority has been filed.

The grounds enclosed with the detention order show that Criminal Casde No. 1645 of 1996 registered against the petitioner at Police Station, Vejalpur with regard to the offence u/Ss. 341, 186, 506 (1), 504, 114 of IPC and under the provisions of section 398 of BPMC Act. The Detaining Authority has also taken into consideration the statements made by the witnesses to the incidents dated 1.5.1996 and 14.6.1996. The petitioner has been held to be a headstrong person and engaged in the criminal activities and has been detained as danger person.

The detention order has been challenged on more than one grounds but the learned counsel for the petitioner submits that no case of breach of public order is made out. In view of the Supreme Court decision in the case of M.J.Shaikh Vs. M.M.Mehta, reported in 1995(2) GLR Pg.1268, it is clear that the allegation and material relied upon against the petitioner by the Detaining Authority do not constitute the case of breach of public order. It is at the most can be said to be a breach of law and order. The detention order therefore deserves to be quashed and set aside.

Accordingly this Special Civil Application is allowed. The impugned detention order dated 29.5.1996 passed by the Police Commissioner, Ahmedabad City is hereby quashed and set aside. The impugned detention order is declared to be illegal. The respondents are directed to release the petitioner forthwith if not required in any other case. Rule is made absolute.
